LEASE—COVENANT AGAINST ASSIGNMENT WITHOUT CONSENT—POWER OF LIQUIDATOR TO ASSIGN.—Appellant had leased premises in question to Farrow's Bank in 1910 for a term of twenty-one years. The lease contained a covenant by "the lessees, their successors and assigns," not to assign the demised premises without previous consent in writing of the lessor. The company was ordered to be wound up compulsorily in January, 1921. A dispute having arisen as to the powers and duties of the liquidator with respect to the lease, the court of equity was called upon to declare, *inter alia*, whether or not the liquidator was bound by the covenant restricting assignment. *Held*, that the liquidator was bound by the covenant. *In re Farrow's Bank, Ld.* [1921], 2 Ch. 164.

The decision in this case is interesting not so much because of its holding as to the powers of the liquidator under the Companies Act of 1908, but because of the reasoning upon which the court proceeded. Under the Companies Act, the liquidator, who is appointed by the court, and resembles the American receiver, takes over full control of the company, and does all necessary acts on its behalf. None of the property is vested in the liquidator, however, in which respect he differs from a trustee in bankruptcy. A trustee in bankruptcy has generally been held *not* to be bound by such a covenant restricting assignment, *Gazlay* v. *Williams*, 210 U. S. 41; *Doe* v. *Bevan*, 3 Maule & S. 353; even though the proceedings were begun upon the lessee's own petition. *Bemis* v. *Wilder*, 100 Mass. 446; *In re Riggs* [1901], 2 K. B. 16. The reason seems to be that the property has vested in the trustee by operation of law, and that then, either because he is under a duty imposed by law to dispose of it for the benefit of creditors, or because he is not a voluntary "assignee," he is not bound by the covenants. But the court in the principal case appeared not entirely in sympathy with rule or reason. Younger, L. J., referred to these bankruptcy cases as "somewhat anomalous," and said they were based on "no very intelligible principle." The court therefore refused to apply the rule of the bankruptcy cases, basing its decision upon the narrow technical distinction that the property did not vest in the liquidator. Or perhaps it would be fairer to say that the court was not inclined to extend a rule which, even as regards bankruptcy, was considered as resting upon a very slender foundation. It is worthy of note that of two American decisions with reference to transfers by receivers one court held that the receiver was bound, *Spencer* v. *Darlington*, 74 Pa. 286; and the other that he was not bound, *Fleming* v. *Fleming Hotel Co.*, 69 N. J. Eq. 715.

MORTGAGES—FORECLOSURE SALE—DESTRUCTION BY FIRE BEFORE CONFIRMATION.—On the foreclosure of a mortgage by advertisement and sale P purchased certain premises. A state statute, C. S., § 2591, provided that ten days should be allowed after a foreclosure sale for receiving additional bids, and if within that time a higher bid was offered there should be a resale. Before the expiration of the ten days a dwelling house on the premises, constituting a third of the value, was accidentally destroyed by fire. P petitioned to be released from his bid. On appeal it was *held* that P's status was only that of a preferred bidder, that the loss sustained by reason of the

fire did not fall on him, and that he should be released from his bid. *In re Sermons' Land* (N. C., 1921), 108 S. E. 497.

The court concedes the prevailing rule to be that when there is a binding contract to convey the purchaser, as equitable owner, assumes the risk of loss from accidental fires. *Paine* v. *Meller,* 6 Ves. 349. See 19 MICH. L. REV. 576, 8 MICH. L. REV. 515. But if either the vendor or purchaser has any option in regard to the performance of the contract the loss falls on the vendor. 2 WILLISTON, CONTRACTS, § 932. For this reason it is generally held that a bidder at a judicial sale does not stand the risk of a loss occurring before the court has confirmed his bid. *Ex parte Minor,* 11 Ves. 559; *In re Finks,* 224 Fed. 92; *Harrigan* v. *Golden,* 58 N. Y. S. 726; *Taylor* v. *Cooper,* 10 Leigh (Va.) 317. But see *contra, Cropper* v. *Brown,* 76 N. J. Eq. 406; *Vance's Adm'r* v. *Foster,* 72 Ky. 389. Until the offer has been reported to the court and it has accepted it by confirmation there is no binding contract and the prospective purchaser is not the equitable owner. *Bowdoin* v. *Hammond,* 79 Md. 173. Until such confirmation the purchaser is nothing more than a preferred bidder. 3 JONES, MORTGAGES (Ed. 7), § 1637. The decision in the principal case is reached by construing the position of the prospective purchaser, during the ten days in which the sale is to remain open, as analogous to the position of the purchaser at a judicial sale before confirmation. Such a construction would seem warranted, and the result reached in the case is clearly a just one.

MUNICIPAL CORPORATIONS—FUTURE INSTALLMENTS AS CONSTITUTING PRESENT "INDEBTEDNESS."—Land was deeded to the city of Sacramento for park purposes, the conveyance being subject to the condition subsequent that if the grantee should not expend a minimum of $5,000 per year for ten years on improvements the land should revert to the grantor. Suit by taxpayer to have the deed declared void on the ground that it operated to create "indebtedness" of the city in violation of constitutional provisions was demurred to on the ground that the annual expenditure was to be met from current revenues and hence was not "indebtedness." *Held,* since the grantors had fully performed by delivering the property, the stipulated expenditure was really a consideration, and is "indebtedness," within the constitutional prohibition, of an amount equal to the sum of the installments. *Chester* v. *Carmichael* (Cal., 1921), 201 Pac. 925.

There is an utter lack of harmony in the various interpretations placed by the different courts on the word "indebtedness." Particularly is this so when, as in the principal case, the transaction concerns a present agreement to pay future installments. There are two types of such agreements, one in which the entire consideration is furnished by the creditor at once, as by erecting a public improvement or conveying property to the city, and the other in which the consideration is furnished continuously through a period of years—for example, by supplying water, gas, or electricity. A majority of courts draw a very sensible distinction between these types, regarding the former as creating indebtedness even though each installment is to be paid from current revenues, and the latter otherwise, at least until the service is